

*(Items related to spill prevention and response have been highlighted in yellow as requested by members of the MPR Spills Working Group)*

**MEMORANDUM OF AGREEMENT**

**BETWEEN THE**

**OLYMPIC COAST NATIONAL MARINE SANCTUARY  
NATIONAL MARINE SANCTUARY PROGRAM  
NATIONAL OCEAN SERVICE  
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
U.S. DEPARTMENT OF COMMERCE**

**AND THE**

**THIRTEENTH COAST GUARD DISTRICT  
UNITED STATES COAST GUARD  
U.S. DEPARTMENT OF HOMELAND SECURITY**

**NOS Control No.: MOA-2002-117**

**As amended by AMENDMENT 001**

## **I. PARTIES**

This Memorandum of Agreement (MOA) is between the National Marine Sanctuary Program (NMSP), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC), and the Thirteenth Coast Guard District, U.S. Coast Guard (USCG), U.S. Department of Homeland Security (DHS). The Olympic Coast National Marine Sanctuary (OCNMS or sanctuary) is administered by the National Marine Sanctuary Program (NMSP).

## **II. PURPOSE**

The purpose of this MOA is to coordinate the efforts of the OCNMS and the USCG to meet their common commitment to protecting and managing the Nation's coastal waters and marine resources within the OCNMS (also referred to as "sanctuary"). In addition, the MOA establishes a consultation process whereby the USCG and NMSP mutually agree upon procedures for conducting activities that support the sanctuary's mission that might otherwise be prohibited by sanctuary regulations.

## **III. BACKGROUND**

- A. On May 11, 1994, the Secretary of Commerce designated the OCNMS off the Washington coast. The sanctuary covers an area of approximately 2,500 square nautical miles of coastal and ocean waters, and submerged lands thereunder, off the coast of central and northern Washington State.
- B. The NMSP, which is administered by NOAA, seeks to protect and manage the conservation, ecological, recreational, research, educational, historical, and aesthetic resources and qualities of designated coastal and marine areas. As such, the OCNMS has interests in ensuring that sanctuary regulations are enforced, and that resource protection programs aimed at understanding and addressing threats to sanctuary resources are developed.
- C. The USCG protects U. S. coastlines by enforcing Federal law related to vessel safety, fishing, entry of illegal immigrants, drug trafficking and ocean dumping. The USCG also conducts search and rescue operations, assumes the lead in responding to spills of oil and hazardous waste and other emergency events, and responds to complaints of improper conduct and vessel operation.
- D. Certain activities carried out by the USCG necessary to respond to emergencies threatening life, property, or the environment, or necessary for law enforcement purposes are exempt from the prohibitions set forth in sanctuary regulations (see 15 CFR 922.152 (c) and (d)). However, other activities such as routine maintenance of aids to navigation and training

exercises are not exempt from sanctuary regulations. Recognizing that many of these routine activities are necessary to support OCNMS management objectives and ensure safe navigation at sea, this MOA establishes a consultation process whereby USCG and NMSP mutually agree upon procedures for conducting activities that support the sanctuary's mission that might otherwise be prohibited by sanctuary regulations. Those USCG activities that support the management objectives of the OCNMS and might otherwise be prohibited by sanctuary regulations are allowed by the attached Letter of Authorization, dated \_\_\_\_\_, from Carol Bernthal, Superintendent, OCNMS to Captain Bill Deveraux, USCG and incorporated by reference into this MOA. See attachment 3.

#### **IV. MAKAH WHALE HUNT ACTIVITIES**

In November of 1997, the Makah Tribe stated their intent to resume subsistence hunting of gray whales within their usual and accustomed fishing grounds as provided for in the 1855 treaty between the Makah Tribe and the United States Government. In recent years, most, if not all, hunting activity has taken place within the boundaries of the sanctuary, and such activity has repeatedly been met with protests of varying intensity both on the surface and in the airspace directly above the sanctuary. The firing of large caliber weapons by the hunters combined with the activities of the various protest groups makes necessary a large-scale USCG presence to ensure the safety of all mariners operating in the vicinity. Both Parties to this Agreement agree to share pertinent information regarding the status of whale hunting and associated protest and media activities within the sanctuary. All USCG personnel involved with law enforcement activities will make prudent efforts to minimize any possible impacts to sanctuary resources and will report observed violations of sanctuary regulations to the sanctuary Superintendent and NOAA's Office of Law Enforcement.

#### **V. REFERENCES AND AUTHORITIES**

- A. The legal authority for the OCNMS to enter into this Agreement is the National Marine Sanctuaries Act (NMSA) 16 U.S.C. § 1442(e) which provides that the Secretary of Commerce may enter into an Agreement with a State or other Federal agency to use the personnel, services, or facilities of such agency on a reimbursable or non-reimbursable basis to assist in carrying out the purposes of the National Marine Sanctuary Program.

- B. The programmatic authority for the OCNMS to enter into this Agreement is NMSA, 16 U.S.C. § 1431 *et. seq.*, which authorizes the designation of certain discrete areas of the marine environment that are of special national significance due to their resources and human use values as national marine sanctuaries.
- C. The Coast Guard has the authority to enforce the NMSA under 14 U.S.C. § 2 and 14 U.S.C. § 89. Section 1437 (h) of the NMSA specifically states that nothing in the NMSA shall be considered to limit the Coast Guard's authority to enforce the NMSA or any other Federal law.

## VI. RESPONSIBILITIES OF THE PARTIES

### A. USCG shall:

1. Participate in the management of the sanctuary by designating a representative to sit on the OCNMS Advisory Council. USCG has designated Commander, Group Port Angeles as the USCG primary representative and Commander, Sector Seattle as the alternate representative to participate in meetings and provide information as necessary.
2. Meet annually with NOAA to discuss collaborative efforts undertaken as part of this MOA in the prior year and to plan for the following year. The work plan and contact list will be updated to as needed, see attachment 4.
3. Inform NOAA of incidents (i.e. vessel grounding, oil/hazardous waste spills, vessel collisions, loss of power and transits of disabled vessels) within or adjacent to the sanctuary, which have the potential to impact sanctuary resources, and consult with NOAA personnel on the proper course of remedial action(s). Pollution Reports (POLREP) and Situation Reports (SITREP) for these incidents will be forwarded to the Sanctuary Superintendent by fax (360-457-8496) or by e-mail ([Carol.Bernthal@noaa.gov](mailto:Carol.Bernthal@noaa.gov)).
4. Advise the sanctuary of issues of concern related to marine safety within the sanctuary raised at the Joint Coordinating Group of the Cooperative Vessel Traffic System or in other maritime forums (such as the Harbor Safety Committee), and work actively with the sanctuary staff to identify solutions.
5. Assist the sanctuary Superintendent in promoting compliance with sanctuary regulations and the International Maritime Organization (IMO) Area to be Avoided (ATBA) through education of mariners. This assistance may also include active participation in the sanctuary's ATBA Education and Monitoring Program.

6. Render operational assistance to sanctuary operations, at the discretion of the Group Commander. This assistance shall not interfere with USCG operational priorities and should be within their scope of operations. This assistance may include the maintenance of a communication schedule (e.g., contact every hour for update) for sanctuary assets or contracted vessels engaged in near-shore or diving operations, transportation of sanctuary staff on USCG assets, temporary use of USCG facilities, (i.e., docks and transient berthing), and assistance investigating incidents such as marine mammal strandings. Station and Group personnel will inform the sanctuary of unusual activities observed within the sanctuary, including both natural and human activities.
7. Ensure that the conduct of critical USCG regional operations are designed and carried out in a manner that minimizes any impacts to sanctuary resources by:
  - a. Complying with the 2000 feet and 1 nautical mile restrictions found in CFR 922.152(a)(7) for all flights of a non-urgent nature (i.e., those not falling under the emergency or law enforcement exemptions of the Sanctuary Rule, see 15 CFR 922.152 (c) and (d)), including USCG aircraft and the aircraft of other agencies directly supporting USCG missions, except:
    - i. When landing and taking off from USCG installations.
    - ii. When aircraft endurance, ceiling, visibility, or other overriding safety considerations prevents compliance with the flight restrictions. In such cases, the Aircraft Commander will make prudent efforts to minimize any possible impacts to sanctuary resources.
    - iii. When engaged in other non-urgent flights, which are coordinated in advance and/or included in a yearly operations plan submitted to the sanctuary Superintendent. Non-urgent flights include scheduled servicing of aids to navigation, training and area familiarization flights. The number of such flights will be minimized to the greatest extent possible.
      - When a USCG flight operation is planned that is not exempted by the regulations (see 15 CFR 922.152(c) and (d)) nor covered in the proposed yearly operational plan submitted to the sanctuary Superintendent, the operational unit shall notify the sanctuary Superintendent and describe the proposed action prior to commencing the flight. Contact should be made with the sanctuary Superintendent or Assistant Manager by phone (360-457-6622) at least 48 hours in advance of planned operations and, to the maximum extent practical, occur simultaneously with law enforcement flights to minimize the number of required flights. Area familiarization flights below 2000 feet will be limited to those absolutely necessary and timed to avoid defined sensitive nesting and breeding periods and locations.

- b. The Office of Aids to Navigation will submit a proposed yearly operations plan to the sanctuary Superintendent. The plan will list the planned scheduled servicing of aids to navigation for Destruction and Tatoosh Islands requiring flights through or in the restricted flight area, flight paths, dates, equipment, and personnel. The sanctuary Superintendent will identify sensitive sanctuary resources, and recommend reasonable and prudent alternatives to maximize protection of sanctuary resources, consistent with safe flight procedures. The plan will also include an annual summary, presented to the Superintendent, of the previous year's activity conducted for this purpose.
- c. Avoid training activities involving pyrotechnics within the sanctuary, except during the execution of required offshore nighttime boat hoist and rescue swimmer training in the following locations and quantities to include:
  - i. Eight (8) annual exercises off the mouth of the Quillayute River consisting of two (2) MK 25 type smoke floats per exercise for total of sixteen (16) smoke floats per year and;
  - ii. Two (2) annual exercises within the boundaries of the sanctuary off of Neah Bay consisting of two (2) MK 25 type smoke floats per exercise for a total of four (4) smoke floats per year.
- 8. Actively support NOAA role in the enforcement of sanctuary regulations, 15 CFR 922, Subpart O. The USCG will provide routine surveillance of the sanctuary concurrent with other USCG operations, and provide dedicated enforcement of sanctuary regulations, as appropriate and within resource constraints and national priorities. Reports on activities noted during flights will be provided to the sanctuary Superintendent. The USCG will meet annually with the sanctuary Superintendent and the Regional NOAA Office of Law Enforcement (OLE) Special Agent in Charge to discuss the previous year's activities, schedule for the coming year, and to ensure continuous and timely analysis of enforcement needs.
- 9. Assist the sanctuary Superintendent in assessing the level and nature of user activity in the sanctuary, based upon sightings made during routine patrols by air or water. Activities of interest to the sanctuary include commercial fishing, commercial shipping, recreational fishing and boating.

**B. NOAA shall:**

- 1. Provide a seat for a USCG-designated representative on the Olympic Coast National Marine Sanctuary Advisory Council.

2. Consult with the USCG on the scope and content for revisions to the OCNMS management plan, on topics of mutual interest including law enforcement, vessel routing measures, and oil spill prevention.
3. Provide briefings and training for USCG personnel on sanctuary regulations and resources or as requested.
4. Provide information, site assessments, and staff expertise in identifying sensitive sanctuary resources and preferred remediation techniques in the event of an emergency situation that threatens sanctuary resources. Sanctuary personnel will operate within the decision-making structure of the Incident Command System (ICS) for oil spills or releases of hazardous substances.
5. Respond to requests for data queries from the sanctuary Vessel Traffic Monitoring System, as well as providing annual summary reports to assess the current level of voluntary compliance with the ATBA. OCNMS will also consult with the USCG on methods to improve voluntary compliance, and any proposed changes to the existing Vessel Traffic Management System within the sanctuary.
6. Provide the USCG with notice of sanctuary activities involving on-water operations and provide sufficient advance notice for requests for USCG assistance in sanctuary operations.
7. Provide the USCG with relevant information regarding sanctuary resources to support development of plans and alternatives for routine operations, e.g., timing and location of sensitive seabird nesting sites and marine mammal haulouts, preferred egress and ingress routes for Aids to Navigation missions to Destruction and Tatoosh Islands, and other measures to minimize the impact to sanctuary resources in the routine conduct of USCG operations. See attachments 1 and 2.
8. Provide a prompt response to any USCG concerns related to sanctuary regulations and their potential for interfering with USCG missions.

## VII. CONTACTS

The contacts for coordinating activities under this Agreement are:

### NMSP

George Galasso  
Assistant Manager

### USCG

Captain William T. Devereaux  
Chief, Prevention Division

Olympic Coast National Marine Sanctuary  
115 East Railroad, Suite 301  
Port Angeles, WA 98362  
Phone: (360) 457-6622 ext 12  
Fax: (360) 457-8496

USCG District 13  
Seattle, WA 98174  
Phone: (206) 220-7220  
Fax: (206) 220-7225

The Parties agree that if there is a change regarding the information in this section, the Party making the change will notify the other Party in writing of such change.

### **VIII. OTHER TERMS AND CONDITIONS**

This Agreement defines, in general terms, the basis on which the Parties will cooperate. This Agreement is not a fiscal or funds obligation document. Any activities involving reimbursement or contribution of funds between the Parties to this Agreement will be handled in accordance with applicable laws, regulations, and procedures. Such activities will be documented in separate Agreements, with specific projects between the Parties spelled out.

### **IX. DURATION OF AGREEMENT, AMENDMENTS, OR TERMINATION**

This Agreement will become effective when signed by both Parties. The Agreement will remain in effect until September 30, 2012, unless terminated by (1) mutual written consent, (2) 30 days advance written notice by either Party, or completion of the operation/terms of this Agreement.

This Agreement may be amended within the scope of this Agreement, extended, or renewed at any time through the written mutual consent of the Parties. The Parties will review this Agreement at least once every three years to determine whether it should be revised, renewed, or canceled.

### **X. RESOLUTION OF DISAGREEMENTS**

Nothing herein is intended to conflict with current DOC or DHS directives or applicable law. If the terms of this Agreement are inconsistent with existing directives or with applicable law of either of the Parties entering into this Agreement, then those portions of this Agreement which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this Agreement not affected by any inconsistency shall remain in full force and effect. At the first opportunity for review of the Agreement, such changes deemed necessary will be accomplished by either an amendment to this Agreement, or by entering into a new Agreement, whichever is deemed expedient to the interests of both Parties.



Should disagreement arise on the interpretation of the provisions of this Agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each Party and presented to the other Party for consideration. If agreement on interpretation is not reached within 30 days, the Parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## **XI. APPROVALS**

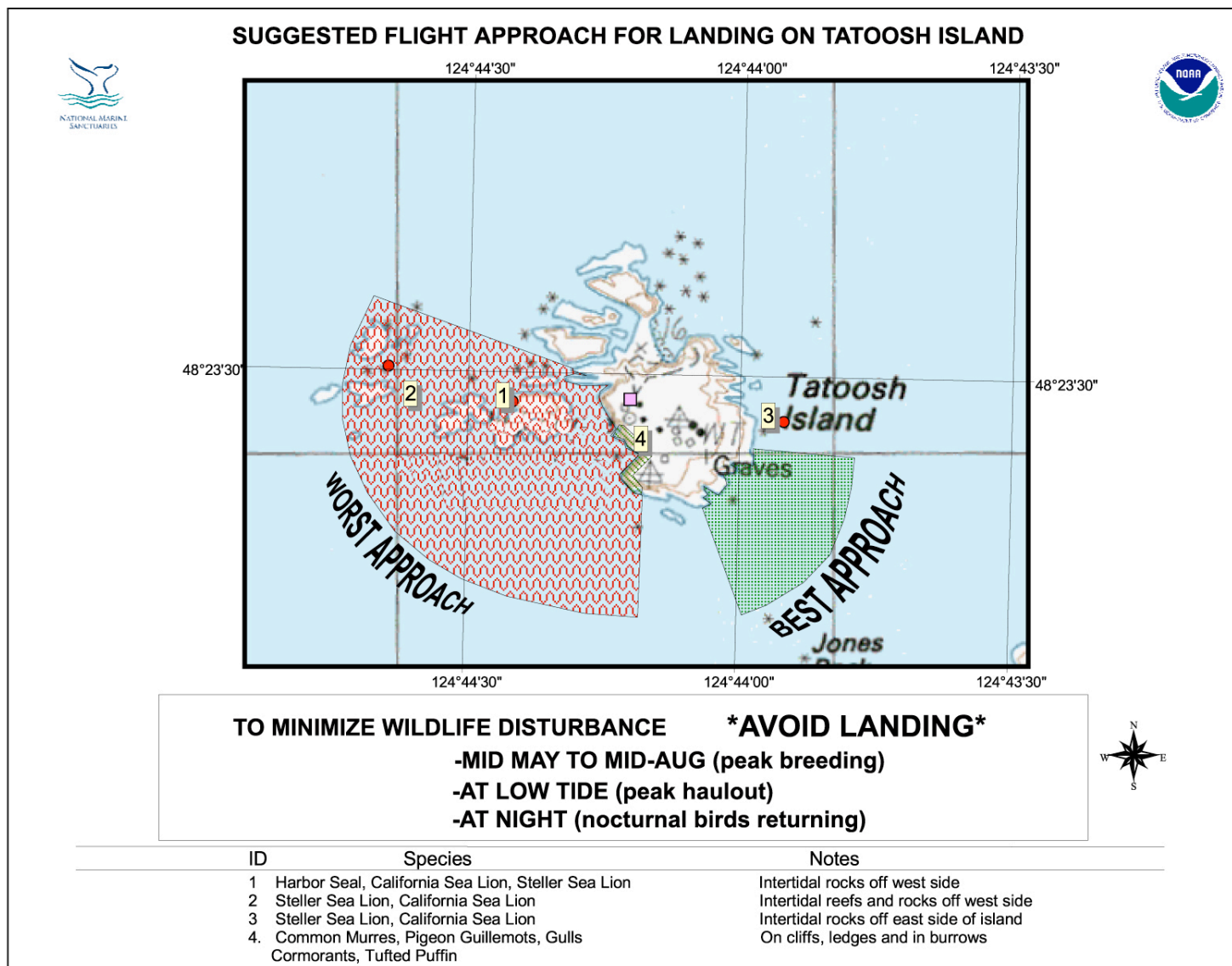
ACCEPTED AND APPROVED FOR THE	ACCEPTED AND APPROVED FOR THE
U.S. DEPARTMENT OF HOMELAND	
SECURITY	
U.S. COAST GUARD	
NATIONAL OCEAN SERVICE	THIRTEENTH COAST GUARD DISTRICT
NATIONAL MARINE SANCTUARY PROGRAM	

BY: \_\_\_\_\_  
 RADM Richard R. Houck  
 Commander  
 Thirteenth Coast Guard District

Date: \_\_\_\_\_

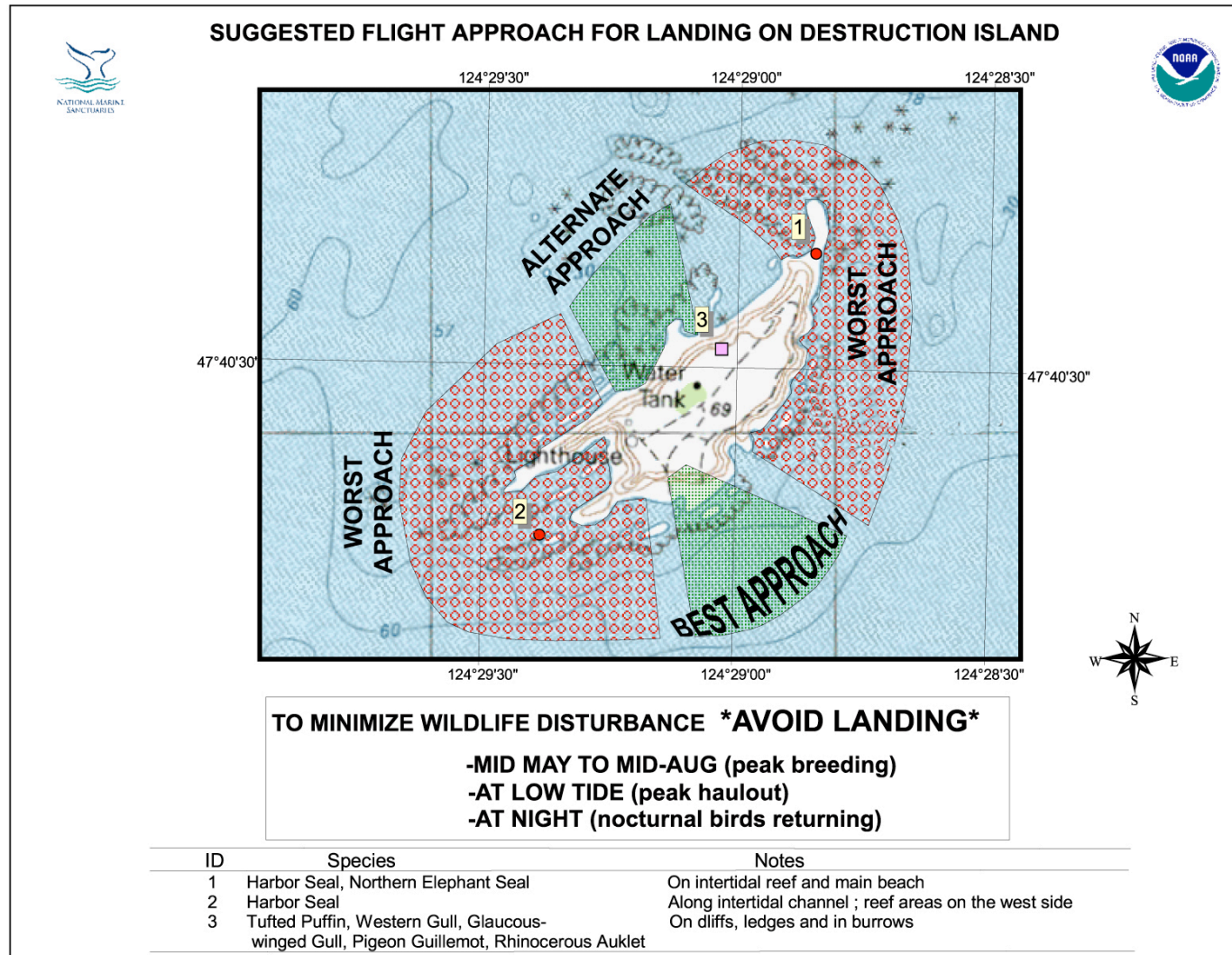
## EXAMPLE

### Attachment 1: Tatoosh Island Sensitive Resources and Recommended Approaches



## EXAMPLE

### Attachment 2: Destruction Island Sensitive Resources and Recommended Approaches



### Attachment 3

Captain Bill Deveraux  
U.S. Coast Guard District 13 Prevention Division  
915 2nd Avenue  
Seattle, WA 98174-1067

#### **Re: Letter of Authorization to Conduct Certain Activities in the Olympic Coast National Marine Sanctuary (OCNMS) under the OCNMS manager's permit**

Dear Captain Deveraux:

This Letter of Authorization (LOA) hereby authorizes you (and others acting on your behalf) to conduct certain activities (described below) that would otherwise be prohibited by OCNMS regulations (15 CFR Part 922, Subpart O) under the authority of the OCNMS manager's permit (permit number OCNMS-2002-001-A2). Activities conducted under this LOA must be conducted consistent with the terms and conditions of that permit (copy attached).

This LOA is also issued to accompany the Memorandum of Agreement dated \_\_\_\_\_ (MOA), between the OCNMS of the National Oceanic and Atmospheric Administration and the United States Coast Guard (USCG) of the U.S. Department of Homeland Security (hereafter referred to as "the MOA"). The provisions and agreements of the MOA are incorporated by reference into this LOA and all activities conducted pursuant to this LOA must be conducted in conformance with the procedures agreed to by the USCG and OCNMS in the MOA.

When implemented in accordance with the MOA and permit number OCNMS-2002-001-A2, this LOA permits the USCG to conduct the following activities within the boundaries of the OCNMS:

1. Activities referenced in the MOA necessary during the maintenance of Aids to Navigation that facilitate the safe transit of vessels through and near the waters of the OCNMS; and
2. Activities referenced in the MOA, including discharge of weapons and pyrotechnic devices into the waters of the OCNMS, as well as area familiarization flights, necessary for the training of USCG search and rescue personnel and USCG law enforcement personnel which enables or enhances the abilities of the USCG to respond to emergencies threatening the loss of life, property or the environment.

This LOA will continue in effect for the life of the MOA and the agreements contained therein and shall be automatically extended upon extension or renewal of the OCNMS manager's permit.

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Carol Bernthal  
Superintendent  
Olympic Coast National Marine Sanctuary

Date

#### Attachment 4: 2009-2010 Work Plan and Contact List

The following table identifies the Coast Guard and Olympic Coast National Marine Sanctuary officials responsible for implementing the different aspects of the Memorandum of Understanding. It will be reviewed and updated annually.

DOCUMENT REFERENCE	USCG LEAD	OCNMS LEAD	DELIVERABLE	SCHEDULE
IV.  Whale Hunting	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Sanctuary Superintendent Carol Bernthal (360) 457-6622 x11	Information sharing on whale hunting and associated protest and media activities within the sanctuary, minimize any possible impacts to sanctuary resources and report observed violations.	No action is anticipated in 2009- 2010.
VI.A.1. & VI.B.1.  Advisory Council	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803  Commander, Sector Seattle CAPT Suzanne Englebert (206) 217-6205	Advisory Council Coordinator Andy Palmer (360) 457-6622 x15	Active participation in the Advisory Council process.	2009 January 29-30 March 20 May 15 July 24 September November  2010 dates pending

VI.A.2. Annual Meeting	D13 Prevention Division Chief CAPT Bill Deveraux (206) 220-7220	Assistant Superintendent George Galasso (360) 457-6622 x12	Annual meeting of 13 <sup>th</sup> CGD and NOAA staff to review work being done under this agreement. Improved communication and efficient collaborative efforts.	First quarter of each calendar year
VI.A.3. & VI.B.4.  Incident Notification & Response	Commander, Sector Seattle (north) CAPT Suzanne Englebert (206) 217-6205  Commander, Sector Portland (south) CAPT Pat Gerrity (503) 240-9355	Assistant Superintendent George Galasso (360) 457-6622 x12 Cell (360) 460-8230  Resource Protection Specialist Liam Antrim (360) 457-6622 x16	Notification and consultation by the CG with OCNMS on vessel grounding, oil/hazardous waste spills, vessel collisions, loss of power and transits of disabled vessels.  NOAA subject expert advice on incident response.	Ongoing
VI.A.4.  Marine Safety	Commander, Sector Seattle CAPT Suzanne Englebert (206) 217-6205	Assistant Superintendent George Galasso (360) 457-6622 x12	Pertinent information from JCG and Harbor Safety Committee meetings	Sanctuary briefed the JCG at their December 2006 meetings. Further action as appropriate.
VI.A.5. & VI.B.5.  ATBA	Commander, Sector Seattle CAPT Suzanne Englebert (206) 217-6205	Assistant Superintendent George Galasso (360) 457-6622 x12	Periodic joint correspondence to the maritime community.	Monthly compliance letters  Annual summary reports on compliance
VI.A.6. & VI.B.6.	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Sanctuary Marine Operations Officer LTJG Allison Maheny (360) 457-6622 x14	Operational assistance by the USCG to OCNMS as appropriate, given available resources.  Notice of sanctuary on-water activities.	Second quarter of each calendar year.

VI.A.7.a.iii. & VI.B.7	Commander, Group Port Angeles (H65) CAPT Scott Pollock (360) 417-5803  Commander, Group Astoria (H60) CAPT Peter Troedsson (503) 861-6200	Assistant Superintendent George Galasso (360) 457-6622 x12	Notification of flights not included in yearly operations plan.	Ongoing
VI.A.7.b. & VI.B.7	D13 Waterways Management Branch Chief LCDR Jason Tama (206) 217-6042	Assistant Superintendent George Galasso (360) 457-6622 x12	Yearly operations plan.	First quarter of each calendar year
VI.A.7.c.	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Assistant Superintendent George Galasso (360) 457-6622 x12	Allowance for minimal but sufficient training opportunities.	Ongoing
VI.A.8.	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Assistant Superintendent George Galasso (360) 457-6622 x12  NOAA Office of Law Enforcement	Annual Enforcement Meeting.	Fourth quarter of each calendar year
VI.A.9.	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Assistant Superintendent George Galasso (360) 457-6622 x12	Assessment of level and nature of user activity	There are currently no specific requests for assessments. This will be discussed at the next annual meeting.

VI.B.2.	D13 Prevention Division Chief CAPT Bill Deveraux (206) 220-7220	Assistant Superintendent George Galasso (360) 457-6622 x12	Coast Guard input on sanctuary management priorities.	The sanctuary will brief the USCG on the status of the management plan review at the next annual meeting.
VI. B.3.	Commander Group Port Angeles & Commander, Sector Seattle	Assistant Superintendent George Galasso (360) 457-6622 x12	NOAA briefings	Ongoing
VI.B.8.	Commander, Group Port Angeles CAPT Scott Pollock (360) 417-5803	Sanctuary Superintendent Carol Bernthal (360) 457-6622 x11	Immediate consideration of USCG operational concerns.	Ongoing